

MAR 29 2004



UNITED STATES DEPARTMENT OF COMMERCE  
Bureau of Industry and Security  
Washington, D.C. 20230

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Petrom GmbH International Trade  
Maria-Theresia Strasse 26  
Munich 81675  
Germany

Attn: *Far-Majio Rahmani*  
*Chief Executive Officer*

Dear Mr. Rahmani:

The Bureau of Industry and Security, United States Department of Commerce ("BIS") has reason to believe that Petrom GmbH International Trade of Munich, Germany ("Petrom") has committed 13 violations of the Export Administration Regulations (the "Regulations"),<sup>1</sup> which are issued under the authority of the Export Administration Act of 1979 (the "Act").<sup>2</sup> Specifically, BIS charges that Petrom committed the following violations:

**Charge 1 (15 C.F.R. §764.2(d) - Conspiracy to Export Check Valves and Spare Parts to Iran without the Required U.S. Government Authorization)**

From on or about March 1999 to on or about May 2000, Petrom conspired and acted in concert with others, known and unknown, to bring about acts that constitute violations of the Regulations by arranging the export from the United States to Iran via Germany of items subject to the Regulations and

---

<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The violations charged occurred from 1999 to 2000. The Regulations governing the violations at issue are found in the 1999-2000 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999-2000)). The 2003 Regulations establish the procedures that apply to this matter.

<sup>2</sup> 50 U.S.C. app. §§ 2401- 2420 (2000). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 *Fed. Reg.* 47833, August 11, 2003), continues the Regulations in effect under IEEPA. The Act and Regulations are available on the Government Printing Office website at: <http://w3.access.gpo.gov>



the Iranian Transactions Regulations<sup>3</sup> without the required U.S. Government authorizations. Pursuant to Section 746.7 of the Regulations, authorizations were required from the Office of Foreign Assets Control, U.S. Department of Treasury ("OFAC") before the items could be exported to Iran. In furtherance of the conspiracy, Petrom and its co-conspirators devised and employed a scheme under which the U.S. exporter would send the items to Petrom in Germany, which would then forward the items to their ultimate destination in Iran. In so doing, Petrom committed one violation of Section 764.2(d) of the Regulations.

**Charge 2 (15 C.F.R. §764.2(c) - Soliciting an Export to Iran Without the Required U.S. Government Authorization)**

On or about March 30, 1999, Petrom solicited a violation of the Regulations when it ordered check valves and spare parts from a U.S. company for export to Iran via Germany without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations, authorization from OFAC was required for the export of check valves and spare parts, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. No OFAC authorization was obtained for the export. In so doing, Petrom committed one violation of Section 764.2(c) of the Regulations.

**Charge 3 (15 C.F.R. § 764.2(e) - Ordering Check Valves and Spare Parts with Knowledge that a Violation of the Regulations was Intended to Occur)**

In connection with facts referenced in Charge 2, Petrom ordered check valves and spare parts with knowledge that a violation of the Regulations was intended to occur. At all times relevant hereto, Petrom knew that prior authorization was required from OFAC to export the check valves and spare parts, items subject to the Regulations and the Iranian Transactions Regulations, to Iran. Petrom ordered the check valves and spare parts knowing that they would be exported to Iran without the required U.S. Government authorization. In so doing, Petrom committed one violation of Section 764.2(e) of the Regulations.

**Charge 4 (15 C.F.R. §764.2(c) - Soliciting an Export to Iran Without the Required U.S. Government Authorization)**

On or about July 8, 1999, Petrom solicited a violation of the Regulations when it ordered a Pyrgent Plus test kit from a U.S. company for export to Iran via Germany without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations, authorization from OFAC was required for the export of a Pyrgent Plus test kit, an item subject to the Regulations and the Iranian Transactions

---

<sup>3</sup> The Iranian Transactions Regulations are currently codified in the Code of Federal Regulations at 31 C.F.R. Part 560 (2003).

Regulations, from the United States to Iran. No OFAC authorization was obtained for the export. In so doing, Petrom committed one violation of Section 764.2(c) of the Regulations.

**Charge 5 (15 C.F.R. § 764.2(e) - Ordering Check Valves and Spare Parts with Knowledge that a Violation of the Regulations was Intended to Occur)**

In connection with facts referenced in Charge 4, Petrom ordered a Pyrgent Plus test kit with knowledge that a violation of the Regulations was intended to occur. At all times relevant hereto, Petrom knew that prior authorization was required from OFAC to export a Pyrgent Plus Test Kit, an item subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. Petrom ordered the Pyrgent Plus test kit knowing that it would be exported to Iran without the required U.S. Government authorization. In so doing, Petrom committed one violation of Section 764.2(e) of the Regulations.

**Charge 6 (15 C.F.R. §764.2(c) - Soliciting an Export to Iran Without the Required U.S. Government Authorization)**

On or about September 14, 1999, Petrom solicited a violation of the Regulations when it order a freight forwarder in the United States to ship tire curing bladders from the United States to Germany. The ultimate destination of the tire curing bladders was Iran and such shipment was to occur without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations, authorization from OFAC was required for the export of tire curing bladders, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. No OFAC authorization was obtained for the intended export which was detained prior to export by the Department of Commerce. In so doing, Petrom committed one violation of Section 764.2(c) of the Regulations.

**Charge 7 (15 C.F.R. § 764.2(e) - Ordering Tire Curing Bladders with Knowledge that a Violation of the Regulations was Intended to Occur)**

In connection with the facts referenced in Charge 6, Petrom ordered tire curing bladders to be shipped to Germany with knowledge that a violation of the Regulations was intended to occur as Iran was the intended ultimate destination of the bladders. At all times relevant hereto, Petrom knew that prior authorization was required from OFAC to ship tire curing bladders, items subject to the Regulations and the Iranian Transactions Regulations, to Germany for further shipment to Iran. Petrom ordered the shipment of tire curing bladders to Germany knowing that Iran was the intended ultimate destination of the bladders and that the shipment would occur without the required U.S. Government authorization. In so doing, Petrom committed one violation of Section 764.2(e) of the Regulations.

**Charge 8 (15 C.F.R. §764.2(c) - Soliciting an Export to Iran Without the Required U.S. Government Authorization)**

On or about September 1999, Petrom solicited a violation of the Regulations when it ordered tire curing bladders from a U.S. company for export to Iran via Germany without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations, authorization from OFAC was required for the export of tire curing bladders, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. No OFAC authorization was obtained for the export which was detained prior to export by the Department of Commerce. In so doing, Petrom committed one violation of Section 764.2(c) of the Regulations.

**Charge 9 (15 C.F.R. § 764.2(e) - Ordering Tire Curing Bladders with Knowledge that a Violation of the Regulations was Intended to Occur)**

In connection with the facts referenced in Charge 8, Petrom ordered tire curing bladders with knowledge that a violation of the Regulations was intended to occur. At all times relevant hereto, Petrom knew that prior authorization was required from OFAC to export tire curing bladders, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. Petrom ordered the bladders knowing that they would be exported to Iran without the required U.S. Government authorization. In so doing, Petrom committed one violation of Section 764.2(e) of the Regulations.

**Charge 10 (15 C.F.R. § 764.2(c) - Soliciting an Export to Iran Without the Required U.S. Government Authorization)**

On or about August 10, 1999, Petrom solicited a violation of the Regulations when it ordered regulator valves and a repair kit from a U.S. company for export to Iran via Germany without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations, authorization from OFAC was required for the export of regulator valves and a repair kit, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. No OFAC authorization was obtained for the export, which was detained prior to export by the Department of Commerce. In so doing, Petrom committed one violation of Section 764.2(c) of the Regulations.

**Charge 11 (15 C.F.R. § 764.2(e) - Ordering Regulator Valves and a Repair Kit with Knowledge that a Violation of the Regulations was Intended to Occur)**

In connection with the facts referenced in Charge 10, Petrom ordered regulator valves and a repair kit with knowledge that a violation of the Regulations was intended to occur. At all times relevant hereto, Petrom knew that prior authorization was required from OFAC to export regulator valves and repair kit, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. Petrom ordered the shipment knowing that the regulator valves and repair kit would be exported to Iran without the required U.S. Government authorization. In so doing, Petrom committed one violation of Section 764.2(e) of the Regulations.

**Charge 12 (15 C.F.R. §764.2(c) - Soliciting an Export to Iran Without the Required U.S. Government Authorization)**

On or about June 18, 1999, Petrom solicited a violation of the Regulations when it ordered electrical equipment from a U.S. company for export to Iran via Germany without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations, authorization from OFAC was required for the export of electrical equipment, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. No OFAC authorization was obtained for the export, which was never shipped from the manufacturer. In so doing, Petrom committed one violation of Section 764.2(c) of the Regulations.

**Charge 13 (15 C.F.R. § 764.2(e) - Ordering Electrical Equipment with Knowledge that a Violation of the Regulations was Intended to Occur)**

In connection with the facts referenced in Charge 12, Petrom ordered electrical equipment with knowledge that a violation of the Regulations was intended to occur. At all times relevant hereto, Petrom knew that prior authorization was required from OFAC to export electrical equipment, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. Petrom ordered the equipment from a U.S. company knowing that the equipment would be exported to Iran without the required U.S. Government authorization. In so doing, Petrom committed one violation of Section 764.2(e) of the Regulations.

Accordingly, Petrom is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$11,000 per violation;<sup>4</sup>

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Petrom fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. (Regulations, Sections 766.6 and 766.7). If Petrom defaults, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to Petrom. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each charge in this letter.

---

<sup>4</sup> See 15 C.F.R. §6.4(a)(2) (2003).

Petrom is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. (Regulations, Section 766.6). Petrom is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should Petrom have a proposal to settle this case, Petrom or its representative should transmit the offer to me through the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Petrom's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

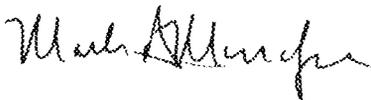
U.S. Coast Guard ALJ Docketing Center  
40 S. Gay Street  
Baltimore, Maryland 21202-4022

In addition, a copy of Petrom's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security  
Attention: Philip Ankel  
Room H-3839  
United States Department of Commerce  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Philip Ankel is the attorney representing BIS in this case; any communications that you may wish to have concerning this matter should occur through him. he may be contacted by telephone at (202) 482-5301.

Sincerely,



Mark D. Menefee  
Director  
Office of Export Enforcement

UNITED STATES OF AMERICA  
UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY

In the Matter of: )

PETROM GmbH INTERNATIONAL TRADE, )

RESPONDENT )

Docket No. 04-BIS-11

RECOMMENDED DECISION AND ORDER

Before:

HONORABLE WALTER J. BRUDZINSKI  
Administrative Law Judge  
United States Coast Guard

Appearances:

For the Bureau of Industry and Security

PHILIP K. ANKEL, Esq.  
Office of Chief Counsel  
Bureau of Industry and Security

For the Respondent

Dr. B. Khadjavi-Gostard, Esq.  
Dr. Veronika Hausmann, Esq.  
KHADJAVI HAUSMANN STEINBRUCK  
Brienner Strasse 10  
(Arco-Palais)

## TABLE OF CONTENTS

PRELIMINARY STATEMENT .....	3
FINDINGS OF FACT .....	11
General Findings Reported Under the ZKA Report .....	12
Relationship Between Petrom and Sunshine Technology and Supplies, Inc. ....	16
Solicitation of Exports to Iran .....	17
Acting with Knowledge that a Violation was Intended to Occur .....	22
Items Subject to the EAR .....	23
Request for Office of Foreign Assets Control Licenses .....	24
ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW .....	24
DISCUSSION .....	26
Petrom's Response .....	27
Applicable Laws and Regulations .....	30
Solicitation of an Unauthorized Export or Reexport .....	32
Acting With Knowledge of a Violation .....	36
Conspiracy or Acting in Concert .....	399
BASIS OF SANCTION .....	40
RECOMMENDED ORDER .....	42
CERTIFICATE OF SERVICE .....	46
INDEX of the OFFICIAL RECORD .....	47
NOTICE TO THE PARTIES REGARDING REVIEW BY UNDER SECRETARY .....	49

## PRELIMINARY STATEMENT

On March 29, 2004, the Bureau of Industry and Security ("BIS" or "Agency") filed a formal Complaint against Petrom GmbH International Trade, ("Petrom" or "Respondent") charging thirteen (13) counts of violation of the Export Administration Act of 1979 ("EAA") and the Export Administration Regulations ("EAR" or "Regulations").<sup>1</sup> See 50 U.S.C. App. §§ 2401-20 (1991), *amended by* Pub. L. 106-508, 114 Stat. 2360 (Supp. 2002); 15 C.F.R. Parts 730-74. The EAA and its underlying Regulations were created to establish a "system of controlling exports by balancing national security, foreign policy and domestic supply needs with the interest of encouraging export to enhance . . . the economic well being" of the United States. See Times Publ'g Co. v. United States Dep't of Commerce, 236 F.3d 1286, 1290 (11<sup>th</sup> Cir. 2001); see also 50 U.S.C. App. §§ 2401-02.<sup>2</sup> The Charging Letter asserts that for the period of time from on or about March 1999 to on or about May 2000, Petrom engaged in unauthorized acts in violation of the Export Administration Regulations under 15 C.F.R. § 764.2, in that, they conspired to export items to Iran without U.S. government approval, solicited exports to Iran without U.S. government approval, and ordered parts and

---

<sup>1</sup> Due to the nature of this transaction, the items in question are also subject to the Iranian Transactions Regulations under the jurisdiction of the Department of Treasury's Office of Foreign Assets Control (OFAC).

<sup>2</sup> The EAA and all regulations under it expired on August 20, 2001. See 50 U.S.C. App. § 2419. Three (3) days before its expiration, the President declared that the lapse of the EAA constitutes a national emergency. See Exec. Order No. 13222, *reprinted in* 3 C.F.R. at §§ 783-84, (2002). Exercising authority under the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§ 1701-06 (2002), the President maintained the effectiveness of the EAA and its underlying regulations throughout the expiration period by issuing Exec. Order No. 13222 (Aug. 17, 2001). The effectiveness of the export control laws and regulations were further extended by Notice issued by the President on August 14, 2002 and August 7, 2003. See Notice of August 14, 2002: Continuation of Emergency Regarding Export Control Regulations, *reprinted in* 3 C.F.R. at 306 (2003) and 68 Fed. Reg. 47833, August 11, 2003. Courts have held that the continued operation and effectiveness of the EAA and its regulations through the issuance of Executive Orders by the President constitutes a valid exercise of authority. See Wisconsin Project on Nuclear Arms Control v. United States Dep't of Commerce, 317 F.3d 275, 278-79 (D.C. Cir. 2003).

equipment with the knowledge that a violation was intended to occur. The March 29, 2004 Charging Letter alleges the following:

**Charge 1 (15 C.F.R. § 764.2(d) – Conspiracy to Export Check Valves and Spare Parts to Iran without the Required U.S. Government Authorization)**

From on or about March 1999 to on or about May 2000, Petrom conspired and acted in concert with others, known and unknown, to bring about acts that constitute violations of the Regulations by arranging the export from the United States to Iran via Germany of items subject to the Regulations and the Iranian Transactions Regulations without the required U.S. Government authorizations. Pursuant to Section 746.7 of the Regulations, authorizations were required from the Office of Foreign Assets Control, U.S. Department of Treasury (“OFAC”) before the items could be exported to Iran. In furtherance of the conspiracy, Petrom and its co-conspirators devised and employed a scheme under which the U.S. exporter would send the items to Petrom in Germany, which would then forward the items to their ultimate destination in Iran. In so doing, Petrom committed one violation of Section 764.2(d) of the Regulations.

**Charge 2 (15 C.F.R. § 764.2(c) – Soliciting an Export to Iran Without the Required U.S. Government Authorization)**

On or about March 30, 1999, Petrom solicited a violation of the Regulations when it ordered check valves and spare parts from a U.S. company for export to Iran via Germany without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations authorization from OFAC was required for the export of check valves and spare parts, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. No OFAC authorization was obtained for the export. In so doing, Petrom committed one violation of Section 764.2(c) of the Regulations.

**Charge 3 (15 C.F.R. § 764.2(e) – Ordering Check Valves and Spare Parts with Knowledge that a Violation of the Regulations was Intended to Occur)**

In connection with facts referenced in Charge 2, Petrom ordered check valves and spare parts with knowledge that a violation of the Regulations was intended to occur. At all times relevant hereto, Petrom knew that prior authorization was required from OFAC to export the check valves and spare parts, items subject to the Regulations and the Iranian Transactions Regulations, to Iran. Petrom ordered the check valves and spare parts knowing that they would be exported to Iran without the required U.S. Government authorization. In so doing, Petrom committed one violation of Section 764.2(e) of the Regulations.

**Charge 4 (15 C.F.R. § 764.2(c) – Soliciting an Export to Iran Without the Required U.S. Government Authorization)**

On or about July 8, 1999, Petrom solicited a violation of the Regulations when it ordered a [Pyrogen] Plus test kit from a U.S. company for export to Iran via Germany without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations authorization from OFAC was required for the export of a [Pyrogen] Plus test kit, an item subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. No OFAC authorization was obtained for the export. In so doing, Petrom committed one violation of Section 764.2(c) of the Regulations.

**Charge 5 (15 C.F.R. § 764.2(e) – Ordering [a Pyrogen Plus test kit] with Knowledge that a Violation of the Regulations was Intended to Occur)**

In connection with facts referenced in Charge 4, Petrom ordered a [Pyrogen] Plus test kit with knowledge that a violation of the Regulations was intended to occur. At all times relevant hereto, Petrom knew that prior authorization was required from OFAC to export a [Pyrogen] Plus Test Kit, an item subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. Petrom ordered the [Pyrogen] Plus test kit knowing that they would be exported to Iran without the required U.S. Government authorization. In so doing, Petrom committed one violation of Section 764.2(e) of the Regulations.

**Charge 6 (15 C.F.R. § 764.2(c) – Soliciting an Export to Iran Without the Required U.S. Government Authorization)**

On or about September 14, 1999, Petrom solicited a violation of the Regulations when it ordered a freight forwarder in the United States to ship tire curing bladders from the United States to Germany. The ultimate destination of the tire curing bladders was Iran and such shipment was to occur without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations authorization from OFAC was required for the export of the tire curing bladders, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. No OFAC authorization was obtained for the intended export, which was detained prior to export by the Department of Commerce. In so doing, Petrom committed one violation of Section 764.2(c) of the Regulations.

**Charge 7 (15 C.F.R. § 764.2(e) – Ordering Tire Curing Bladders with Knowledge that a Violation of the Regulations was Intended to Occur)**

In connection with facts referenced in Charge 6, Petrom ordered tire curing bladders to be shipped to Germany with knowledge that a violation of the Regulations was intended to occur as Iran was the intended ultimate destination of the bladders. At all times relevant hereto, Petrom knew that prior authorization was required from OFAC to ship tire curing bladders, items subject to the Regulations and the Iranian Transactions Regulations, to Germany for further shipment to Iran. Petrom ordered the shipment of tire curing bladders to Germany knowing that Iran was the intended ultimate destination of the bladders and that the shipment would occur without the required U.S. Government authorization. In so doing, Petrom committed one violation of Section 764.2(e) of the Regulations.

**Charge 8 (15 C.F.R. § 764.2(c) – Soliciting an Export to Iran Without the Required U.S. Government Authorization)**

On or about September 1999, Petrom solicited a violation of the Regulations when it ordered tire curing bladders from a U.S. company for export to Iran via Germany without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations authorization from OFAC was required for the export of tire curing bladders, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. No OFAC authorization was obtained for the export, which was detained prior to export by the Department of Commerce. In so doing, Petrom committed one violation of Section 764.2(c) of the Regulations.

**Charge 9 (15 C.F.R. § 764.2(e) – Ordering Tire Curing Bladders with Knowledge that a Violation of the Regulations was Intended to Occur)**

In connection with facts referenced in Charge 8, Petrom ordered tire curing bladders with knowledge that a violation of the Regulations was intended to occur. At all times relevant hereto, Petrom knew that prior authorization was required from OFAC to export tire curing bladders, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. Petrom ordered the bladders knowing that they would be exported to Iran without the required U.S. Government authorization. In so doing, Petrom committed one violation of Section 764.2(e) of the Regulations.

**Charge 10 (15 C.F.R. § 764.2(c) – Soliciting an Export to Iran Without the Required U.S. Government Authorization)**

On or about August 10, 1999, Petrom solicited a violation of the Regulations when it ordered regulator valves and a repair kit from a U.S. company for export to Iran via Germany without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations authorization from OFAC was required for the export of regulator valves and a repair kit, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. No OFAC authorization was obtained for the export, which was detained prior to export by the Department of Commerce. In so doing, Petrom committed one violation of Section 764.2(c) of the Regulations.

**Charge 11 (15 C.F.R. § 764.2(e) – Ordering Regulator Valves and a Repair Kit with Knowledge that a Violation of the Regulations was Intended to Occur)**

In connection with facts referenced in Charge 10, Petrom ordered regulator valves and a repair kit with knowledge that a violation of the Regulations was intended to occur. At all times relevant hereto, Petrom knew that prior authorization was required from OFAC to export regulator valves and repair kit, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. Petrom ordered the shipment knowing that the regulator valves and repair kit would be exported to Iran without the required U.S. Government authorization. In so doing, Petrom committed one violation of Section 764.2(e) of the Regulations.

**Charge 12 (15 C.F.R. § 764.2(c) – Soliciting an Export to Iran Without the Required U.S. Government Authorization)**

On or about June 18, 1999, Petrom solicited a violation of the Regulations when it ordered electrical equipment<sup>3</sup> from a U.S. company for export to Iran via Germany without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations authorization from OFAC was required for the export of electrical equipment, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. No OFAC authorization was obtained for the export, which was never shipped from the manufacturer. In so doing, Petrom committed one violation of Section 764.2(c) of the Regulations.

---

<sup>3</sup> In its Memorandum and Submission of Evidence to Supplement the Record, dated October 20, 2004, BIS refers to the Electrical Equipment identified in Charges 12 and 13 as "Mercury Thermal Systems and [thermowells]."

Charge 13 (15 C.F.R. § 764.2(e) – Ordering Electrical Equipment with Knowledge that a Violation of the Regulations was Intended to Occur)

In connection with facts referenced in Charge 12, Petrom ordered electrical equipment with knowledge that a violation of the Regulations was intended to occur. At all times relevant hereto, Petrom knew that prior authorization was required from OFAC to export electrical equipment, items subject to the Regulations and the Iranian Transactions Regulations, from the United States to Iran. Petrom ordered the equipment from a U.S. company knowing that the equipment would be exported to Iran without the required U.S. Government authorization. In so doing, Petrom committed one violation of Section 764.2(e) of the Regulations.

Following the grant of several extensions of time to file an Answer, on July 5, 2004, Petrom, through its attorney, Dr. B. Khadjavi-Gontard, filed a formal Answer denying “any intention to reexport to Iran the subject goods.” Petrom stated that the goods imported to Germany “were not reexported to Iran” and with regard to the Charges six (6) through nine (9), that a “misunderstanding as to the destination of the shipment had been caused by a mistaken review of [] order reference numbers....” In its Answer, Petrom did not formally demand a hearing and on July 27, 2004, this matter was assigned pursuant to 15 C.F.R. § 766.15 to the Honorable Peter A. Fitzpatrick, Administrative Law Judge (ALJ), Norfolk. BIS regulations provide that a written demand for hearing must be explicitly stated. *Id.* As in this case, Respondent’s failure to formally demand a hearing is deemed a waiver of Respondent’s right to a hearing and this Recommended Decision and Order is hereby issued on the basis of the submitted record.<sup>4</sup> See *id.* and § 766.6(c).

On August 18, 2004, an Order to File Briefs was issued directing the parties to file the necessary, “Affidavits or declarations, depositions, admissions, answers to interrogatories and stipulations” to supplement the record. In that Order, the parties were placed on

---

<sup>4</sup> No witness testimony was received in this proceeding. The case Index of the official record provides the exclusive listing of documents received in this matter. A copy of the Index is provided as Attachment A.

notice that proceeding on the record "does not relieve the parties from the necessity of proving the facts supporting their charges or defenses." (citation provided to § 766.15).

On September 7, 2004, Petrom filed a response, reasserting the defenses raised in their July 5, 2004 Answer and requested that "Respondent should be informed by the Court about the facts presented to BIS" in order to comply with the ALJ's August 18, 2004 Order to file briefs or documents. On September 8, 2004, the Honorable Peter A. Fitzpatrick issued an Order stating that the burden of proof in this administrative proceeding lies with the Agency and that any submission regarding same must be served upon Respondent. Respondent was then given an opportunity to submit documentation in support of its defense following the receipt of Agency materials. On September 20, 2004, the parties were granted a thirty (30) day stay to file briefs following the parties' request to allow "further [discussion of] the factual basis for Respondent's response and to discuss resolution of this matter."

On October 20, 2004, the Agency filed its Memorandum and Submission of Evidence to Supplement the Record (Agency Brief). The Agency's Brief contained thirty-nine (39) exhibits. Several of the exhibits were translated from German to English by AB Si Translation Services, Inc., 8350 N.W. 52<sup>nd</sup> Terrace, Suite 209, Miami, Florida 33166. Following receipt of the Agency's Brief, Respondent sought an additional extension of time in order to prepare its submission. Respondent's request for an additional extension of time was granted by Order dated November 4, 2004.

On November 24, 2004, Respondent filed its submission to supplement the record entitled, Respondent's Answer to the Memorandum and Submission of Evidence to Supplement the Record Submitted by the Bureau of Industry and Security (Respondent's

Brief). At this point, Respondent's defense can generally be characterized as the failure by the Agency to show that Respondent either, exported or intended to export, or had knowledge that the items in question were to be exported to Iran and that Respondent "does not accept and acknowledge the extraterritorial effect of the U.S. Iranian Transaction Regulations as claimed by the BIS."

On December 28, 2004, this matter was reassigned by the Chief Administrative Law Judge to the undersigned Judge. On January 3, 2005, an Order to File Pre-decisional Briefs was issued to provide the parties with an opportunity to file any:

1. exceptions to any ruling made by this Administrative Law Judge or to the admissibility of evidence proffered in this matter;
2. proposed findings of fact and conclusions of law;
3. supporting legal arguments for the exceptions and proposed findings and conclusions submitted; and
4. a proposed order.

On January 24, 2005, BIS filed its Memorandum of Proposed Findings of Fact and Conclusions of Law, which included a proposed monetary sanction in the amount of \$143,000 and a denial of export privileges for twenty (20) years. Respondent did not file any proposed findings. Given that the parties have been provided an ample amount of time and opportunity to supplement the record and, in keeping with the procedures set forth in 15 C.F.R. Part 766, I find that this matter is now ripe for decision.

For the reasons that follow, I hereby find that the Bureau of Industry and Security has met its burden as shown in the written record by the preponderance of substantial, reliable, and probative evidence that Petrom GmbH International Trade violated the Export Administration Act and its supporting Regulations as alleged in the March 29, 2004 Charging Letter.

## FINDINGS OF FACT

1. On May 6, 1995, the President of the United States signed Executive Order 12959 to prohibit certain transactions, including the export and reexport of certain items with respect to Iran ("Iranian Embargo"). Exhibit 29, Agency Brief, 60 Fed. Reg. 24757, May 9, 1995.<sup>5</sup>
2. Executive Order 12959 prohibits the export or reexport of virtually all U.S. commercial transactions with Iran, unless a license has been previously issued or the transaction is exempt by statute. Exhibit 2, Agency Brief.
3. The United States Department of Treasury, Office of Foreign Assets Control (OFAC) administers the Iranian Transactions Regulations (31 C.F.R. Part 560) under the authority of the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. §§ 1701 *et seq.*), the National Emergencies Act, (50 U.S.C. §§ 1601 *et seq.*), and the International Security and Development Cooperation Act of 1985, (22 U.S.C. §§ 2349aa-9). Exhibit 1 and 2, Agency Brief.
4. The OFAC is charged with administering the Iranian Embargo, which includes items subject to the Export Administration Regulation ("EAR"). The Bureau of Industry and Security also administers licensing requirements under the EAR for items that may be exported or reexported to Iran. Exhibit 2, Agency Brief, see also 15 C.F.R. § 746.7(a)(2).

---

<sup>5</sup> Unless noted, the citations provided hereunder reference the exhibit numbers associated with the Agency's Memorandum and Submission of Evidence to Supplement the Record ("Agency Brief") and Respondent's reply to the Agency's Brief ("Respondent's Brief"). Several of the Agency's exhibits were translated from German to English as provided for by AB Si Translation Services, Inc., 8350 N.W. 52<sup>nd</sup> Terrace, Suite 209, Miami, Florida 33166. To the extent provided the Agency's Proposed Findings of Facts and Conclusions of Law are accepted and incorporated herein. The Respondent did not submit any Proposed Findings of Facts and Conclusions of Law

5. The United States of America and the Federal Republic of Germany signed a mutual agreement regarding custom related activities and will lend assistance to each respective Custom Agency in order to facilitate trade cooperation between nations. Exhibit 3 and 6, Agency Brief.
6. The German Customs Authority is named Zollkriminalamt or "ZKA." In response to a request by the U.S. Customs Service, known presently as the Bureau of Immigration and Customs Enforcement ("ICE"), the ZKA provided assistance with regard to the activities of Petrom. The ZKA issued a report ("ZKA Report") on March 21, 2000, which was translated by Heike Spelt and is provided as Exhibit 4 and 5, Agency's Brief.

#### General Findings Reported Under the ZKA Report<sup>6</sup>

7. Petrom GmbH International Trade is a company registered in the Commercial Registry of Munchen, Germany. Since 1997, Petrom's commercial address is Maria Theresia Str. 26, D-81675 Munchen.
8. Petrom's commercial objective is "trade of any kind, especially import and export of industry products, raw materials and agriculture products."
9. The sole proprietor is Majid Rashmanifar. His last name may be spelled as "Rahmani" or "Rahmanifar." The Respondent's Attorney indicates that Mr. Majid Rahmani-Far is the Chief Executive Officer of Petrom. See Respondent's request for extension of time, dated June 18, 2004.

---

<sup>6</sup> Unless noted otherwise, all citations in this subsection pertain to Exhibit 4 (ZKA Report), Agency's Brief.

10. Born April 28, 1961 in Teheran, Iran and is presently an Iranian citizen, Mr. Rashmanifar has further ventures in other companies, including one company named Petrom International Trade S.I., located in Madrid, Spain.
11. Petrom used an invoice numbering system with the following convention: "client number, / ES (=Enquiry Sale) + consecutive numbers per client / RE 1 (if partial delivery then RE2....)." "For example: 10121/ES-07 RE 1."
12. A client list provided by the ZKA Report indicates the following pertinent information concerning Petrom's client identification numbers:

<u>Client Number</u>	<u>Client Name and place of business</u>
10816	Iran Tire Manufacturing Company, Teheran, Iran
11308	Kian Tire Manufacturing Co., Teheran, Iran
11602	Razzi Vaccine and Serum Inst., Teheran/Karaj, Iran
10821	Iran Aircraft Manufacturing Industries, Teheran, Iran
10332	Darou Pakhsh Co., Teheran, Iran
10817	Iran Research Organisation for Science and Technology, Teheran, Iran

Exhibit 5, Agency Brief.

13. The ZKA Report concerning Petrom's client numbering system that identifies Iran as an ultimate export destination was also corroborated and demonstrated by:

11602 – Razzi Vaccine and Serum Inst.

- a. In an undated export for 300 kg of Casamino Acid delivered to Razzi Vaccine and Serum Institute located at Karaj, Iran, the ZKA Report identified the export order number corresponding to Razzi Vaccine and Serum Institute as 11602. Exhibit 5, (ZKA Report), Agency Brief.

- b. Under Invoice No. 3341/97, dated August 13, 1997, from Sunshine Textiles, Inc., to Petrom, it referenced "YOUR ORDER P.O. 11602/ES-12." The order comprised of "22 ITEMS LABORATORY CHEMICALS" valued at "USD 9021.95." Exhibit 35, Agency Brief.

The ZKA Report disclosed that "SEVEN DAYS TRADE CO. LTD., Teheran, Iran had asked PETROM in lieu of RAZZI VACCINE whether the chemical products could be delivered." In its communication with Seven Days Trade, Co., Ltd., Petrom referenced the invoice number "B/1205/11602/ES-12/Q2." Exhibit 5, (ZKA Report), Agency Brief.

The ZKA Report identifies client no. 11602 as, Razzi Vaccine and Serum Inst., located in Teheran/Karaj, Iran. Exhibit 5, (ZKA Report), Agency Brief.

In further support, a Shippers Export Declaration ("SED") form issued on August 23, 1997 for Sunshine Textiles, Inc., which referenced laboratory chemicals valued at \$9021.00. The SED lists Razi Vaccine and Serum Inst., Teheran, Iran as the ultimate consignee with a port of unloading designated as Teheran, Iran. Exhibit 36, Agency Brief.

10816 - Iran Tire Manufacturing Co.

- c. On February 13, 1995, Petrom sent a facsimile to Sunshine Textiles, Inc. concerning an order from Antares where they "mention that the goods are destined for Iran." The facsimile referenced "10816/ES-20." Exhibit 37, Agency Brief.

The ZKA Report identified customer no. 10816 as the Iran Tire Manufacturing Co., located in Teheran, Iran. Exhibit 5 (ZKA Report), Agency Brief.

- d. In an invoice dated January 19, 1993, from Penberthy, Inc. to Petrom for the export of hydraulic power equipment, it referenced a customer order no. 10816/ES-05/PP12. While the invoice showed that the export was to be shipped to Petrom in Munich, Germany, it also contained the words "EXPORT IRAN" on the form. Exhibit 38, Agency Brief. A second document entitled, Certificate of Origin was issued by Penberthy, Inc. that provided similar information containing the words "Export Iran" on the form. Exhibit 39, Agency Brief.

The ZKA Report identified customer no. 10816 as the Iran Tire Manufacturing Co., located in Teheran, Iran. Exhibit 5 (ZKA Report), Agency Brief.

10821 - Iran Aircraft Manufacturing Industries

- e. In an invoice dated March 3, 1995, from Sunshine Textiles, Inc. to Petrom, it referenced order number 10821/ES-02. The exported item was delivered to the Iran Aircraft Manufacturing Industries located in Isfahan, Iran.

In another undated export from Sunshine Textiles, Inc. to the Iran Aircraft Manufacturing Industries, the ZKA Report identified the export order number as 10821/ES-06/RE 1. Exhibit 5 (ZKA Report), Agency Brief.

The ZKA Report identified customer no. 10821 as the Iran Aircraft Manufacturing Industries, located in Teheran, Iran. Exhibit 5 (ZKA Report), Agency Brief.

10332 - Darou Pakhsh Co.

- f. In an invoice dated May 7, 1996, for an export by Petrom to Darou Pakhsh Co., Teheran, Iran, it referenced order number "10332/ES-29/RE1." Exhibit 5 (ZKA Report), Agency Brief.

In another invoice dated April 16, 1996, for an export by Petrom to Darou Parkhsh Co., Teheran , Iran, it referenced order number "10332/ES-28/RE1." Exhibit 5 (ZKA Report), Agency Brief.

The ZKA Report identified client number 10332 as the Darou Pakhsh Co. located in Teheran, Iran. Exhibit 5, (ZKA Report), Agency Brief.

Relationship Between Petrom and Sunshine Technology and Supplies, Inc.

14. On May 6, 1999, Petrom entered into an agreement with Mr. Hadi Saheli and Mrs. Maray Blanco (Mr. Saheli's wife) for the purpose of establishing a United States based company to purchase products made by U.S. companies for import to Europe. The company was named, Sunshine Technology and Supplies, Inc. ("Sunshine").<sup>7</sup> Exhibit 25, Agency Brief.
15. Under the agreement, it was agreed that Sunshine's business address was to be the same as Mr. Saheli's residential address, 14230 SW 45 Terrace, Miami, Florida

---

<sup>7</sup> This company is distinguished from Sunshine Textiles, Inc., who also performed considerable activities with Petrom.

33175. Sunshine was not required to "pay any rent whatsoever." Exhibit 24, 25, 26, Agency Brief.

16. Petrom was the "actual owner" of Sunshine and bore "all costs of registration and other costs for running the company ... as well as corporate and other taxes as well as respective legal fees ...." Sunshine was created to "exclusively carry out business activities of Petrom. Petrom shall provide the necessary info, instructions, payment etc. for such business activity." In addition, Mr. Saheli would receive monthly compensation from Petrom. Exhibit 25, Agency Brief.

#### Solicitation of Exports to Iran

##### Check Valves and Parts

17. In March of 1999, Petrom, through Sunshine ordered "600 PCS CHECK VALVES AND PARTS" as indicated by Invoice No. 1161/99 for shipment from the United States to Germany. The invoice referenced "Your order P.O. 10816/ES-99." The shipment, as indicated by a Certificate of Origin was made by "United States Postal Service Air" to Petrom's address, Maria-Theresia Str. 26, Munich 81675 Germany. The reference number provided on the Certificate of Origin was 10816/ES-99/PP01. Exhibit 7 and 8, Agency Brief.

18. The client number code for 10816 is the Iran Tire Manufacturing Company located in Teheran, Iran. Exhibit 4 and 5 (ZKA Report), Agency Brief.

##### Pyrogen Test Kit

19. In August of 1999, Petrom, directed Sunshine to contact BioWhittaker ("BW") to order the following, "Pyrogen Plus, Single Test Kit, 24 Single Test Vials Lysate,

1x1 ml Vial Endotoxin, Certificate of Analysis" (Pyrogen Test Kit"). Exhibit 9, Agency Brief. On or about August 16, 1999, BW shipped the Pyrogen Test Kit to Sunshine. Exhibit 11, Agency Brief. On the BW shipment form, "10332/ES-40" was hand written along with other notes. *Id.* On or about August 18, 1999, Sunshine shipped the Pyrogen Test Kit to Petrom, Munich, Germany. Exhibit 10, Agency Brief.

20. The client number code for 10332 is the Darou Pakhsh Co. located in Teheran, Iran. Exhibit 4 and 5 (ZKA Report), Agency Brief.

#### Tire Curing Bladders

21. In September of 1999, Petrom directly contacted Danzas AG ("Danzas"), a freight forwarding firm and requested a detailed offer for shipment of one (1) palette of tire curing bladders that would be shipped from "Bryan, OH" to Tehran via Germany. Exhibit 12, Agency Brief. In a following letter from Petrom to Danzas, it references, "Shipment ex Cleveland" where Petrom states, "Please instruct Danzas in Cleveland to contact Sunshine" regarding the shipment. Exhibit 13, Agency Brief. Danzas has an office located in Cleveland, Ohio. Respondent's Answer, dated July 5, 2004.
22. In an email dated September 21, 1999 from Michael Mittasch, Danzas GmbH, Inc. to Harry Walton, Airfreight Manager, Danzas, Cleveland, Mr. Mittasch states "please contact [Sunshine for] the following shmt ... ready at Byron, Ohio for our customer Petrom, GmbH, Munich." He further states, "Please note that shmt has to go to FRA not MUC, as we have to send it from there to THR, Iran." Exhibit 15, Agency Brief.

23. The shipment of the curing bladders from Danzas' Cleveland Office was never completed as the Danzas Cleveland office "decided not to serve Petrom with this transport" as it involved "the embargo US to IRAN." Id. The shipment was however, already in route to Cleveland when that decision was made. Id.
24. On September 30, 1999, a shipment of four (4) tire curing bladders was seized by special agents from the Office of Export Enforcement in Middleburg Heights, Ohio. The Report of Investigation states that the curing bladders had been shipped from a U.S. tire manufacturer as requested by Sunshine for the consignee, Petrom with an ultimate destination of Iran. Exhibit 17, Agency Brief.
25. By Invoice dated September 22, 1999, Sunshine notified Petrom concerning "Your Order P.O. 11308/ES-82/EP-01" for "4 pcs Curing Bladders." Exhibit 16, Agency Brief.
26. In addition, in a letter dated November 4, 1999, Petrom sent confirmation to Danzas referencing, "Shipment ex Cleveland." Petrom's letter provided, "Our ref: 11308/ES-82/TI-01." Exhibit 14, Agency Brief.
27. The client number code for 11308 is the Kian Tire Manufacturing Co. located in Teheran, Iran. Exhibit 4 and 5 (ZKA Report), Agency Brief.
28. By letter dated November 4, 1999 from Danzas to Petrom, Danzas stated that a "misunderstanding" had occurred "regarding a shipment by Sunshine Technology & Supplies to Petrom GmbH International Trade." The letter concerned a shipment and its subsequent seizure, on or about September 30, 1999, of four (4) curing bladders by the Office of Export Enforcement. Danzas stated that "[b]ecause of a similarity in internal reference numbers, we mistakenly believed

that your shipment of tire bladders was destined to Iran." Respondent's Answer, dated July 5, 2004.

Regulator Valves and Repair Kit

29. On August 11, 1999, Petrom contacted Sunshine directing them to send a purchase request, "no. 10816/ES-117/ep-11" to Copes-Vulcan, Inc. as represented by RME Associates, Inc., Lutz, Florida. Exhibit 18, Agency Brief.
30. Sunshine forwarded the purchase order requesting two (2) thermostatic regulating valves and other various parts. The request referenced purchase order no. 10816/ES-117/ep-11 and was billed as \$11,147.06. Exhibit 19, Agency Brief.
31. Copes-Vulcan, Inc. sold the items in question to Sunshine as indicated by invoice signed on August 26, 1999. The billing invoice referenced Sunshine's purchase order no. 10816/ES-117/ep-11 and was billed at \$11,147.00. Exhibit 20, Agency Brief.
32. By letter dated November 12, 1999, Sunshine notified Petrom regarding Invoice No. 4162/99 which referenced "2 VALVES AND ONE SET REPAIR KIT" in the amount of "USD 11,147.06." Exhibit 21, Agency Brief.
33. On November 18, 1999, special agents from the Office of Export Enforcement seized the shipment in Hapeville, Georgia. The shipment was destined to Sunshine and was labeled "P/O: 10816/ES-117/EP-11." Exhibit 22, Agency Brief.
34. The client number code for 10816 is the Iran Tire Manufacturing Company, located in Teheran, Iran. Exhibit 4 and 5 (ZKA Report), Agency Brief.

Mercury Thermal Systems and Thermowells

35. On September 25, 1997, Petrom contacted Sunshine Textiles, Inc. and inquired about ordering pen recorders, mercury thermal system and thermowells, and bourdon pressure elements. Petrom stated they initially tried to contact "Tom at ABB" and requested that Sunshine Textiles, Inc. inform ABB that "we need the following for export South America - Brazil." Exhibit 23, Agency Brief.

It is noted that the ZKA Report stated that Sunshine Textiles, Inc. had previously listed Brazil, on or about August 30, 1997, as the ultimate destination for a Petrom export, which was later determined to be a reexport to Teheran, Iran via Germany. Exhibit 4, (ZKA Report), Agency Brief. It is further noted that Sunshine Textiles, Inc. employed a similar strategy in another order to Petrom, where it provided the end user as "R.P.C. comercio Ltda, Rio de Janeiro/Brazil." According to the Airway bill dated, April 30, 1996, the export was initially delivered to Germany, but was later forwarded on May 10, 1996 to Darou Parsh in Iran. Id.

36. Although Petrom initially contacted Sunshine Textiles, Inc., it was Sunshine, who later issued a purchase order providing, "Our Ref: 11308/ES-26/PP-01A" and "Your Ref.: Fax quotation dated Oct. 07, 1999." The purchase order was directed to ABB Instrumentation, Inc., Rochester, NY and ordered eighty (80) Mercury Thermal Systems (plus thermowells) and seventy (70) Bourdon pressure elements. Exhibit 26, Agency Brief.

37. On September 23, 1999, an order acknowledgment was printed by ABB Automation Inc., Warminster, PA for Sunshine detailing a shipment that

contained, among other items, eighty (80) "04A-WELL PER PRINT", seventy (70) "BOURDON SPRING PRESSURE", and eighty (80) "CONSTR. CARD-MERCURY SYSTEM." Exhibit 27, Agency Brief.

38. As referenced by the ABB order acknowledgment, it indicated "REF., P.O. # 11808/ES-26/PP01." On the last page of the order acknowledgment is a handwritten correction, with an arrow and question mark pointing to the reference P.O. number. The handwritten number provided was 11308 versus the printed number, 11808. Exhibit 27, Agency Brief.
39. As referenced earlier by the agreement signed between Petrom and Sunshine (May 6, 1999), Mr. Saheli, who represented Petrom's direct interest in Sunshine, "received an amount of USD 25,000 for relaying to ABB/Taylor, as down payment for order no. 11308/ES-26." This amount was paid to ABB/Taylor. Exhibit 25, Agency Brief.
40. The client number code for 11308 is the Kian Tire Manufacturing Co. located in Teheran, Iran. Exhibit 4 and 5 (ZKA Report), Agency Brief.

Acting with Knowledge that a Violation was Intended to Occur

41. On June 15, 1992, prior to the issuance of the United States embargo on Iran, Petrom had contacted Sunshine Textiles, Inc. regarding a shipment destined for Iran. Petrom later requested that Sunshine Textiles, Inc. obtain export license applications from the International Trade Administration, U.S. Department of Commerce to export these materials to Iran. Exhibit 30 and 31, Agency Brief.

42. On August 5, 1992, Sunshine received a facsimile transmission from DIFCO Laboratories that provided excerpts from the Regulations governing exports to Iran. Exhibit 32, Agency Brief. In the facsimile, Sunshine was appraised of the license requirements concerning exports to Iran. DIFCO Laboratories later stated, "We regret to inform you that due to current governmental restrictions, we cannot enter into any business proceedings with your country." Exhibit 33, Agency Brief.
43. On February 13, 1998, Petrom sent payment instructions for the Commerzbank Corp. to credit the Republic Bank of Miami for the designated beneficiary of Mr. Hadi Saheli in the amount of \$73,937.00. The instructions stated, "Intended use P.O. No. 10816 / ES-78/PP01, 10816 / ES-81/PP04, PP05, 11308 /ES-58, Down Payment for 11308 /ES-26." The country of purchase was listed as "Iran." Exhibit 34, Agency Brief.
44. By letter dated February 15, 2000, Mr. Rahmanifar, on behalf of Petrom indicated "that it is the expressed business policy of our company to also consider embargo regulations of other States." Exhibit 28, Agency Brief.

Items Subject to the EAR

45. By letter dated July 26, 2000, the Office of Export Enforcement (OEE) received a response from the Office of Strategic Trade and Foreign Policy Controls regarding the OEE's request for export classification for the following equipment:

Ethyl cellulose for use as either an adhesive or a protective coating in tire manufacturing; tire curing bladders, electrical spare parts for the curing press used in tire manufacturing equipment, a two-inch CL 250 class iron-threaded B1 regulator/W type "R" thermostat,

and a strut tension relief and repair kit consisting of plugs, cages, pins, packing and gaskets, all for export to Iran between January 1, 1995 and February 15, 2000 ....

The Office of Strategic Trade and Foreign Policy Controls stated that "all of the commodities are classified as EAR99." Exhibit 1, Agency Brief.

Request for Office of Foreign Assets Control Licenses

46. By letter dated January 14, 2000, the Office of Export Enforcement (OEE) received a response from the Office of Foreign Assets Control (OFAC) stating that a review of their files from "August 1995 to the present" revealed that no OFAC licenses had ever been issued to either:

- a. Mary Blanco
- b. Mary Saheli
- c. Hadi Saheli
- d. Sunshine Technology Supply Inc.
- e. Petrom GmbH
- f. Petrom International
- g. The Iran Tire Manufacturing Co.
- h. Milano International Co.
- i. Sunshine Textiles Inc.

OFAC further stated that "the above names were checked against the current list of OFAC Specially Designated Nationals ("SDN"). None of the names appear on the list." Exhibit 2, Agency Brief.

**ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Petrom GmbH International Trade and the subject matter of this case are properly within the jurisdiction of the Bureau of Industry and Security in accordance with

the Export Administration Act of 1979 (50 U.S.C. App. §§ 2401-20) and the Export Administration Regulations (15 C.F.R. Parts 730-74).

2. The Bureau of Industry and Security established by a preponderance of the evidence that Petrom GmbH International Trade violated 15 C.F.R. § 764.2(d) by conspiring or acting in concert with others in a manner or for the purpose of bringing about or doing an act to export items subject to the EAR without U.S. Government authorization in violation of the EAA, or the EAR, or any order, license or authorization issued thereunder.
3. The Bureau of Industry and Security established by a preponderance of the evidence that Petrom GmbH International Trade violated 15 C.F.R. § 764.2(c) by soliciting in the unauthorized export of equipment and items subject to the Export Administration Regulations from the United States to the Islamic Republic of Iran.
4. The Bureau of Industry and Security established by a preponderance of the evidence that Petrom GmbH International Trade violated 15 C.F.R. § 764.2(e) by acting with knowledge that a violation of the EAA, the EAR or any order, license or authorization issued thereunder, has occurred, is about to occur, or is intended to occur by the unauthorized export of equipment and items subject to the Export Administration Regulations from the United States to the Islamic Republic of Iran.
5. Given the facts and circumstances of this matter, the Bureau of Industry and Security's proposed assessment of civil penalties for the denial of export

privileges against Petrom GmbH International Trade for the period of twenty (20) years and a civil monetary penalty of \$143,000 is justified and reasonable.

## DISCUSSION

The Export Administration Act and the supporting Export Administration Regulations provides broad and extensive authority for the control of exports from the United States. See In the Matter of: Abdulmir Madhi, et al, 68 Fed. Reg. 57406 (October 3, 2003); see also 50 U.S.C. App. §§ 2402(2)(A), 2404(a)(1), 2405(a)(1), and 15 C.F.R. § 730.2. Additional authority, providing explicit export controls by regulations and Executive Orders apply specifically to exports to Iran and other restricted countries. In 1987, the President, through an Executive Order, invoked import sanctions against Iran, which in general, prohibited the export of any goods, technology or services from the United States to Iran without expressed authorization. See Exec. Order No. 12613, *reprinted in* 52 Fed. Reg. 41940 (Oct. 30, 1987); see also Exec. Order No. 12959, *reprinted in* 60 Fed. Reg. 24757 (May 6, 1995)(expanding sanctions imposed against Iran); Exec. Order No. 12957, *reprinted in* 60 Fed. Reg. 14615 (Mar. 15, 1995) (declaring actions and policies with respect to the Iranian Government to be a national emergency); see also 31 C.F.R. §§ 560.204, 560.501. Iran is listed under the EAR as a country having special export and embargo controls. See 15 C.F.R. § 746.7.

The burden in this Administrative Proceeding lies with the Bureau of Industry and Security to prove the charged violations by the preponderance of the evidence. See In the Matter of: Abdulmir Madhi, et al, 68 Fed. Reg. 57406 (October 3, 2003). The preponderance of evidence standard is demonstrated by reliable, probative, and

substantial evidence. See Steadman v. S.E.C., 450 U.S. 91, 102 (1981). The Agency, in simple terms, must demonstrate "that the existence of a fact is more probable than its nonexistence." Concrete Pipe & Products v. Construction Laborers Pension Trust, 508 U.S. 602, 622 (1993).

In this matter, Petrom is charged with thirteen (13) violations of the Export Administration Regulations occurring from, on or about, March 1999 to, on or about, May 2000. Briefly stated, the March 29, 2004 Charging Letter charges Petrom with one count of conspiracy under 15 C.F.R. § 764.2(d), six (6) counts of solicitation under 15 C.F.R. § 764.2(c), and six (6) counts of acting with knowledge that a violation of the Regulations would occur under 15 C.F.R. § 764.2(e).

#### Petrom's Response

At the onset, Petrom stated that it is "a German limited company duly established and registered in accordance with German law." Petrom's position is that it has "acted in accordance with the applicable German laws and regulations and had no knowledge and/or intention to violate any export regulations of other countries such as the United States of America, when performing its trade activities which to the understanding of [Petrom] have no binding force on [] its management as a German legal entity and/or German individuals." Petrom's Request for Extension of Time, dated April 7, 2004.

In its formal Answer, dated July 5, 2004, Petrom denied the allegations charged by BIS. It specifically addressed Charges six (6) through nine (9) (tire curing bladders) as a simple mistake made by a freight forward company because of the "similarity in internal reference numbers." Petrom stated, "Acting on this mistaken information, the Danzas office in Cleveland, Ohio notified the U.S. Government that the shipment was

destined for Iran.” Respondent’s Answer, dated July 5, 2004. Petrom included a letter from Danzas, dated November 4, 1999, which was provided in response to a request from Petrom. The Danzas letter stated, this “is to clarify a misunderstanding regarding a shipment by Sunshine Technology & Supplies to Petrom GmbH International Trade of four curing bladders, which we understand was seized and detained in Cleveland, Ohio .... Because of a similarity in internal reference numbers, we mistakenly believed that your shipment of tire bladders was destined for Iran.” Danzas further provided, “to the best of our knowledge, the four curing bladders are intended for use in Germany, not in Iran.”

With regard to the remaining charges, Petrom denied in its Answer any intent to reexport the items in question from Germany to Iran and that “the mere fact that Petrom has done business in the past also with Iranian national is obviously not sufficient to prove such an intention.” Categorically stated, Petrom denies that it intended to reexport the subject items to Iran and that none of the items were, in fact, reexported to Iran.

On November 24, 2004, Petrom filed its response to the Agency’s Brief entitled, Respondent’s Answer to the Memorandum and Submission of Evidence to Supplement this Record Submitted by the Bureau of Industry and Security (Respondent’s Brief). Respondent’s opposition was divided into three (3) main arguments; Applicable Export Controls, Evidentiary Submission by the BIS, and Extraterritorial effect of the Regulations.

#### Applicable Export Controls

Petrom states that it “understands that during the time period in question ... it has been a violation of the Regulations to export items subject to both the Iranian

Transactions Regulations and the Regulations without a license ... [and that items] intended specifically for transshipment to Iran are items subject to both the Iranian Transactions Regulations and the Regulations and were not allowed [to] be exported without an OFAC license." Petrom concludes that BIS failed to sufficiently prove "the crucial question in these proceedings" which is to demonstrate that Petrom had any intent "to transship to Iran the items imported from the United States."

#### Evidentiary Submission by the BIS

Responding to the Agency's Brief and Exhibits, Petrom states that the invoice numbering system detailed by the ZKA "that forms the basis for the charges" is not "sufficient evidence to prove the intention of Respondent to transship the respective items from Germany to Iran. Even if the client number used in [a] transaction between Respondent and [a] U.S. export firm referred to an Iranian customer, this does not prove that the respective items imported from the United States to Germany were definitely destined to be transshipped afterwards from Germany to the respective Iranian client."

Petrom argues that "If a criminal offense does not refer to certain acts committed by the charged person, but only to the intention of such person to commit certain acts in the future, the evidence of such intention has to be clearly established. This requirement is not met by the mere reference to certain client numbers in the invoices made out by the U.S. export firm to Respondent."

Regarding Charges 3, 5, 7, 9, 11, and 13 (knowledge that a violation was to occur), Petrom "clearly denies to have had actual knowledge of the specific restrictions and limitations contained in the Regulations with regard to the reexport to Iran...."

Petrom acknowledged that the United States "announced certain restrictions for the

export to Iran” but it “has not been aware ... that the mere intention to transship goods imported from the U.S. to Germany at a future date to Iran had been sufficient to be charged under the Regulation.” Petrom argues that it is common knowledge that certain military equipment and items are covered by the Regulations but that it had “no knowledge that the items [in question] imported from the U.S. ... [were also covered].”

#### Extraterritorial effect of the Regulations

Petrom “takes the view that Respondent, as a German company with seat and business establishment in Munich, only had to comply with the requirements of German and international law as far as export restrictions are concerned.” “As a German company acting from its German business establishment Respondent cannot be expected, by contrast, to be informed about regulations on foreign trade of third countries, like the U.S., when doing business with Iran.” Petrom’s overall legal position is that it “does not accept and acknowledge the extraterritorial effect of the U.S. Iranian Transaction Regulations as claimed by the BIS ....”

#### Applicable Laws and Regulations

The Regulations provide that “No person may engage in any conduct prohibited by or contrary to ... any conduct required by, the EAA, the EAR ....” 15 C.F.R. § 764.2(a). Specifically, as it pertains to this matter;

No person may *conspire or act in concert* with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the EAA, the EAR, or any order, license or authorization issued thereunder. *Id.* at §764.2(d).

No person may *solicit or attempt* a violation of the EAA, the EAR, or any order, license or authorization issued thereunder. *Id.* at § 764.2(c).

No person may *order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in*

whole or in part, any item exported from the United States, or that is otherwise subject to the EAR, with knowledge that a violation of the EAA, the EAR, or any order, license or authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with this item. Id. at 764.2(e).

The term "Export means an actual shipment or transmission of items subject to the EAR from the United States...." Id. at § 734.2(b)(1). The term "Reexport means an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country ...." Id. at § 734.2(b)(4). The export or reexport of items subject to the EAR through another country for the purpose of transshipping the items to a new country is considered to be an export to that new country. Id. at § 734.2(b)(6).

BIS has jurisdiction for all items "subject to the EAR," which generally are listed on the Commerce Control List (CCL), but for certain items that are not so listed, the Regulations provide, "For ease of reference and classification purposes, items subject to the EAR which are not listed on the CCL are designated as 'EAR99.'" Id. at § 734.3(c). The items at issue in this matter are classified as "EAR99," see Exhibit 1, Agency Brief, and are therefore, "subject to the EAR" pursuant to 15 C.F.R. § 734.3(c). In addition, the items in question are also subject to the Iranian Transactions Regulations administered by the OFAC and may not be exported without an OFAC license. 15 C.F.R. § 734.3(b)(1)(ii) and § 746.7, and 31 C.F.R. Part 560.204.

Given the response by Petrom, it is important to note that the rules provide that a person, whether or not they are complying with foreign laws or regulations "is not relieved of the responsibility of complying with U.S. laws and regulations, including the EAR." Id. at § 734.12.

### Solicitation of an Unauthorized Export or Reexport

In considering the record taken as a whole, BIS has proved by the preponderance of evidence that Petrom solicited unauthorized exports for equipment and items subject to the EAR from the United States to Iran via Germany in violation of 15 C.F.R. § 764.2(c). By mutual agreement between the United States of America and the Federal Republic of Germany, the German Customs Authority, the Zollkriminalamt ("ZKA"), provided pertinent, reliable, and credible evidence to establish that Petrom used a client identification numbering system in its orders, invoices, and correspondence. The client identification system was clearly demonstrated by Petrom's own use and business practice to associate its Iranian customers with unique identifiers. As shown by the ZKA Report, Petrom used the client identification system for shipments and orders that occurred prior to and during the present embargo against Iran. Some of the documents form the basis of the Charges presented, while others were provided for illustrative or other evidentiary purposes. For example, in certain facsimile transmissions, invoices, forms, or communications, Petrom would list Iran as the ultimate destination and use the client identifiers as outlined by the ZKA Report. See Exhibit 4, 36, 37, 39, Agency's Brief. Concerning the pertinent exports charged here, Petrom's continued use of the same client identifiers is evidenced by its own invoices, documents, and correspondence. All of which reliably indicate by the preponderance of the evidence that Petrom continued to order parts, equipment, and items, which were subject to the EAR for export to Iran.

The Agency submitted reliable, probative and substantial evidence, which in its entirety, demonstrate that Petrom solicited orders for:

1. check valves and parts for client number 10816, which was identified by the ZKA Report as the Iran Tire Manufacturing Company, Teheran, Iran;
2. pyrogen test kit for client number 10332, which was identified by the ZKA Report as the Darou Pakhsh Company, Teheran, Iran;
3. tire curing bladders ordered directly by Petrom through a freight forwarder and indirectly through Sunshine for client number 11308, which was identified by the ZKA Report as the Kian Tire Manufacturing Company, Teheran, Iran;
4. regulator valves and repair kit for client number 10816, which was identified by the ZKA Report as the Iran Tire Manufacturing Company, Teheran, Iran; and
5. mercury thermal systems, thermowells, and other equipment for client number 11308, which was identified by the ZKA Report as the Kian Tire Manufacturing Company, Teheran, Iran.

Regarding Charges six (6) through nine (9) concerning the orders for the tire curing bladders, Petrom submits the November 4, 1999 letter by Danzas as a defense. The Danzas letter indicates that Danzas made a mistake regarding an order reference number where it mistakenly believed that the tire curing bladders were destined to Iran. Based on this mistaken belief, Danzas contacted local U.S. Government authorities. Upon review of the record taken as a whole, the Danzas letter, which was prompted by a request from Petrom does not comport with the evidence submitted by BIS. In Exhibit

12, Agency's Brief, a telefax sent by Petrom to Danzas, documents "inquiry No. 11308/ES-82/TI-01," and states that the shipment of tire curing bladders will be made from Byron, Ohio, "to Germany via air freight" and "Onward to: from Germany "collect" via Iran Air to Teheran." In addition, Sunshine sent an invoice to Petrom, dated September 22, 1999, for purchase order number 11308/ES-82/EP-01, which listed "4 pcs Curing Bladders" valued at \$1851.04. The client identifier listed in both communications is the Kian Tire Manufacturing Company, located in Teheran, Iran. Exhibit 4 and 5 (ZKA Report), Agency Brief. Based on the above, the November 4, 1999 Danzas letter is outweighed by the evidence demonstrating that Petrom possessed the knowledge that the shipments were ordered for an Iranian client.

In addition, BIS charged Petrom with two separate violations of soliciting orders for tire curing bladders, Charges six (6) and eight (8). The first solicitation was a direct order from Petrom to the freight forwarding company, Danzas, AG. See Exhibit 12, Agency Brief. This order was labeled as "inquiry No. 11308/ES-82/TI-01" for "1 palette" of curing bladders. In a separate communication from Petrom to Danzas, Petrom instructs Danzas "to contact Sunshine so that they can have the merchandise delivered to Cleveland." Exhibit 13, Agency Brief. The record does not show whether or not this communication ever occurred. However, Sunshine would send an invoice to Petrom referencing, "4 pcs Curing Bladders" for "Your Order P.O. 11308/ES-82/EP-01." Exhibit 16, Agency Brief. The "enquiry sale" numbers (ES-82) are the same for both documents; however, the last part of the invoice numbers are different, TI-01 versus EP-01. Looking to the ZKA Report, no further definition is provided except to state that this section can indicate partial delivery by using the code "RE." The record also does not

indicate whether or not "1 palette" of curing bladders is equivalent to "4 pcs Curing Bladders." Given the distinctions presented, the record demonstrates that Sunshine was solicited at some point to procure tire curing bladders in addition to Petrom's direct solicitation to Danzas.

The Regulations proscribing the acts charged apply to a "person" and provide separate and distinct sanctions for "each violation." 15 C.F.R. § 764.2, 764.3. The Regulations therefore contemplate separate violations to allow for cumulative penalties. See FAA v. M. Marshall Landy & Int'l Aircraft Leasing, Inc., 705 F.2d 624, 636 (2<sup>nd</sup> Cir. 1983). In this instance, each solicitation of the tire curing bladders required an additional act on the part of Petrom. The record supports the position that Petrom acted on at least two (2) occasions to solicit orders for tire curing bladders. The issue as to whether or not the solicitations were directed to the same order does not have to be reached. See United States v. Technic Services, Inc., 314 F.3d 1031, 1046 (9<sup>th</sup> Cir. 2002) (holding that "The test for multiplicity is whether each count 'requires proof of an additional fact which the other does not.'") (quoting Blockburger v. United States, 284 U.S. 299, 304 (1932)). A person can be charged under the same regulation based on related conduct and may be sanctioned with multiple violations "if the conduct underlying each violation involves a separate and distinct act." Id. see also United States v. Vaughn, 797 F.2d 1485 (9<sup>th</sup> Cir. 1986) and United States v. Wiga, 662 F.2d 1325 (9<sup>th</sup> Cir. 1981).

Based on the above, it is hereby held that Petrom committed two (2) solicitations regarding the order for tire curing bladders.

Petrom also raises the argument that the items in question were never actually reexported from Germany to Iran. While the record demonstrates that certain

transactions did not occur due to the intervention by the Department of Commerce, the record provides that other transactions were in fact exported to Germany. The facts presented however, are that all of the items in question were ultimately destined for delivery to Iran. Under the Regulations, it is a violation to solicit or attempt a violation of the EAA or EAR. The fact that a shipment never reached its final destination is not an element of the charged act. See 15 C.F.R. § 764.2(c).

Given all of the reliable and credible information presented, it is found that Petrom solicited exports, either directly or indirectly from U.S. companies for export to Germany, with an ultimate destination of Iran. All of which occurred without U.S. Government authorization in violation of the EAA and EAR.

#### Acting With Knowledge of a Violation

One of Petrom's main arguments is that BIS has failed to demonstrate that Petrom possessed the intent to transship or reexport the items in question to Iran. In one of its responses, Petrom also refers to a "criminal offense" and states, "evidence of such intention has to be clearly established." This proceeding however, is not criminal in nature and the evidentiary standards presented here are certainly different from those required in a criminal proceeding.

Here, Petrom is charged with acting with knowledge that a violation "has occurred, is about to occur, or is intended to occur ...." 15 C.F.R. § 764.2(e). From the previous discussion, it is clear that Petrom ordered the items in question for export to its clients located in Iran. Petrom's argument that the client or invoice numbering system cannot support the position that Petrom intended to transship or reexport the items in question to Iran fails on several points.

- a. First, it was the German Customs Authority ("ZKA") who compiled and identified the client information concerning Petrom's order numbering system. The ZKA compiled this information from Petrom's own records. The ZKA Report demonstrates Petrom's ongoing business practice and reasonably and reliably indicates that Petrom was soliciting exports from the United States with an ultimate destination of Iran without the required U.S. Government authorization in violation of the EAA and EAR. It is the customer identification number along with the compilation of documents, invoices, facsimiles, and letters that provide by a preponderance of evidence that Petrom ordered equipment and items from U.S. companies with the intent to transship or reexport the items to Iran without the required U.S. Government authorization. In one of many examples presented in the record, Petrom was shown to issue payment instructions to Commerzbank, in which Petrom provided purchase order numbers for payment. The client identifiers presented in the purchase order numbers follow the same format outlined in the ZKA Report. The ZKA Report designates the client identifiers in the payment instruction as Iranian customers. In further support of the record, Petrom provides in the payment instruction to Commerzbank that the country of purchase is "Iran." Exhibit 34, Agency Brief.
- b. Second, the formation of Sunshine Technology and Supplies, Inc. is nothing more than a corporate front established by Petrom to foster its ability to deal directly with U.S. companies. The record clearly demonstrates that Sunshine

was exclusively owned, controlled, organized, funded, and operated by Petrom.

In addition to the above, the record shows that Petrom possessed actual knowledge that a U.S. embargo was present against Iran. In a telefax issued prior to 1995, Petrom directed Sunshine Textile, Inc. to contact the International Trade Administration for the Department of Commerce to obtain export license applications to allow it to export to Iran. Exhibit 30 and 31, Agency Brief. Petrom's own policy statement issued by Mr. Rahmanifar is that Petrom will consider "embargo regulations of other states." Exhibit 28, Agency Brief. Furthermore, in a 1992 transaction, Sunshine, who acted on behalf of Petrom, was given with a copy of the Regulations concerning certain export controls to Iran. In the facsimile sent from DIFCO Laboratories, Sunshine was appraised of the Regulations that required export licenses for Iran. See Exhibit 32, Agency Brief. DIFCO Laboratories would later inform Sunshine "that due to current governmental restrictions, we cannot enter into any business proceedings with your country." Exhibit 33, Agency Brief.

Given the above, I find that Petrom was in possession of the knowledge that the United States had placed an embargo and other trade restrictions for exporting or reexporting items from the United States to Iran. It is hereby held that Petrom, with this knowledge, continued to order equipment and items without the required U.S. Government authorization knowing that a violation of the EAA, the EAR or any order, license or authorization issued thereunder would occur.

### Conspiracy or Acting in Concert

Given that Petrom solicited the items in question for the period of time starting on or about March 1999, it is clear that Petrom conspired or acted in concert with others, mainly Sunshine Technology and Supplies, Inc. to export items subject to the EAR to Iran without U.S. Government authorization in violation of the EAA and EAR. Petrom developed a scheme to facilitate the ordering of equipment and items from U.S. companies, mainly through Sunshine Technology and Supplies, Inc., for export to Germany with the knowledge and or intent that it would reexport the items to Iran.

Further, Petrom's compliance with all German export laws does shield it from violating United States export laws. See In the Matter of: Abdulmir Madhi, et al, 68 Fed. Reg. 57406, (October 3, 2003); 15 C.F.R. § 734.12. In addition, without any expressed requirements to demonstrate knowledge or intent, the Regulations on their face can be treated on the basis of strict liability with regard to the imposition of civil penalties. See In the matter of: Aluminum Company of America, 64 Fed. Reg. 42641-02 (Aug. 5, 1999) (finding that "liability and administrative sanctions are imposed on a strict liability basis once the Respondent commits the proscribed act"); Iran Air v. Kugelman, 996 F.2d 1253 (D.C. Cir. 1993) (reaffirming the Agency's position that knowledge is not an "essential element of proof for the imposition of civil penalties"). "Moreover, knowledge of the Act and Regulations properly may be imputed to a Respondent who, from abroad, was actively engaged in an effort to export an unlicensed controlled commodity from the United States." In the Matter of Doron Rotler Individually a/d/a/ Ram Robotics Ltd., aka Ram Robotic Automation Manufacturing Systems Ltd., 58 Fed. Reg. 62095, 62099 n.16 (November 24, 1993).

not?

Given all of the above, which demonstrates that Petrom solicited and acted with knowledge that a violation would occur and acted in concert with Sunshine and others, it is hereby held that Petrom conspired in a manner or purpose that was designed to bring about or commit an act in violation of the EAA or EAR in prohibition of 15 C.F.R. § 764.2(d).

#### BASIS OF SANCTION

The Bureau of Industry and Security has authority to assess civil penalties and suspensions from practice, including the denial of export privileges before the Department of Commerce. See 15 C.F.R. § 764.3. Here, BIS recommends a twenty (20) year period of denial of export privileges and a civil monetary sanction of \$143,000 against Petrom GmbH International Trade for its unlawful conduct in this matter. BIS argues that Petrom GmbH International Trade disregarded U.S. export laws and Regulations with the knowledge that a major embargo exists between the United States and Iran.

The record shows that Petrom did not apply for any U.S. Government authorization to export the items from the United States to Iran. It instead chose to create and conspire with others, including Sunshine Technology and Supplies, Inc. in a scheme to order U.S. equipment and items for export to Germany with the knowledge or intent that these items would be reexported to Iran. BIS proposes the above civil penalty sanctions due to Petrom's "severe disregard and contempt for U.S. export control laws." BIS argues that a twenty (20) year period of denial is also consistent with other cases of this nature. See In the Matter of: Arian Transportvermittlung Gmbh, 69 Fed. Reg. 28120, (May 18, 2004) (assessing a ten (10) year denial period in connection with an

Iranian transaction); In the Matter of: Abdulmir Madhi, et al, 68 Fed. Reg. 57406, (October 3, 2003) (assessing a twenty (20) year denial period in connection with an Iranian transaction); In the Matter of: Jubal Damavand General Trading Co., 67 Fed. Reg. 32009, (May 13, 2002) (assessing a ten (10) year denial period in connection with an Iranian transaction).

Of particular note and by all appearances, the record demonstrates that Petrom sought to circumvent U.S. export control laws by setting up a front company in Sunshine Technologies and Supplies, Inc. in an effort to order U.S. origin equipment and parts for eventual export to Iran. While the burden rests with the Agency to prove the facts alleged, Petrom offered very little, if not any, countervailing evidence in its defense. Petrom could not challenge the ZKA Report which outlines Petrom's own business practice and methodology. It was shown that Petrom possessed knowledge of the U.S. embargo on Iran when it sought export license approvals prior to the incidents in question. The record also demonstrates that Sunshine was provided copies of the Regulations concerning the export of certain materials to Iran. The Agency contends that Petrom "has not taken responsibility for its actions" and "cannot be trusted to comply with U.S. export control laws" and, in particular, dealing with a country that this nation maintains an embargo against due to its support for international terrorism. See also 15 C.F.R. § 746.7 (stating "Iran has been designated by the Secretary of State as a country that has repeatedly provided support for acts of international terrorism").

Due to the severe nature of the violations and the veiled arguments raised by Petrom, I find that the Agency's proposed assessment is fair, reasonable, and justified.

**RECOMMENDED ORDER**

**["RECOMMENDED ORDER" Section – REDACTED]**

**["RECOMMENDED ORDER" Section – REDACTED]**

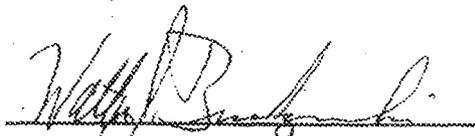
**["RECOMMENDED ORDER" Section – REDACTED]**

This Recommended Decision and Order is being referred to the Under Secretary for review and final action by express mail as provided under 15 C.F.R. § 766.17(b)(2). Due to the short period of time for review by the Under Secretary, all papers filed with the Under Secretary in response to this Recommended Decision and Order must be sent by personal delivery, facsimile, express mail, or other overnight carrier as provided in §

766.22(a). Submissions by the parties must be filed with the Under Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Room H-3898, 14<sup>th</sup> Street and Constitution Avenue, N.W., Washington, D.C. 20230, within twelve (12) days from the date of issuance of this Recommended Decision and Order. Thereafter, the parties have eight (8) days from receipt of any response(s) in which to submit replies.

Within thirty (30) days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order, affirming, modifying or vacating the Recommended Decision and Order. See § 766.22(c). A copy of the Agency regulations for Review by the Under Secretary is attached.

Done and dated this 25<sup>th</sup> day of April, 2005 at  
New York, New York



Walter J. Brudzinski  
Administrative Law Judge  
U.S. Coast Guard

## CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing RECOMMENDED DECISION & ORDER by Federal Express to the following persons:

Under Secretary for Export Administration  
Bureau of Industry and Security  
U.S. Department of Commerce  
Room H-3839  
14<sup>th</sup> & Constitution Avenue, N.W.  
Washington, D.C. 20230  
Phone: 202-482-5301

Philip K. Ankel, Esq.  
Office of Chief Counsel for Industry and Security  
U.S. Department of Commerce, Room H-3839  
14<sup>th</sup> Street & Constitution Avenue, N. W.  
Washington, D. C. 20230  
Phone: (202) 482-5301  
Facsimile: (202) 482-0085

Dr. B. Khadjavi-Gostard, Esq.  
Dr. Veronika Hausmann, Esq.  
KHADJAVI HAUSMANN STEINBRUCK  
Brienner Strasse 10  
(Arco-Palais)  
(via International Federal Express)

ALJ Docketing Center, Baltimore  
40 S. Gay Street, Room 412  
Baltimore, Maryland 21202-4022  
Phone: 410-962-7434

Done and dated this 25<sup>th</sup> day of April, 2005 at  
New York, New York



Shaniqua G. Jenkins  
Paralegal Specialist, Assistant to the  
Administrative Law Judge  
Phone: 212-668-2970  
Facsimile: 212-825-1230

## ATTACHMENT A

### INDEX of the OFFICIAL RECORD

1). CHARGING LETTER TO RESPONDENT, PETROM GMBH INTERNATIONAL TRADE CHIEF EXECUTIVE OFFICER, FAR-MAJJO RAHMANI (NOTICE OF APPEARANCE FOR RAHMANI)

- Date of Notice March 29, 2004.
- Received by ALJ Docketing Center March 31, 2004.

2). LETTER FROM VIRGINIA FRANKLIN TO PHILIP D. GOLRICK, ESQ. RESPONDING TO CHARGING LETTER.

- Letter dated April 2, 2004.

3). RESPONDENT'S RESPONSE TO CHARGING LETTER (REQUEST FOR EXTENSION)

- Received April 7, 2004.

4). ORDER GRANTING EXTENSION OF TIME

- Issued April 22, 2004.

5). RESPONDENT'S SECOND REQUEST FOR EXTENSION OF TIME

- Filed on June 18, 2004.

6). ORDER GRANTING EXTENSION OF TIME

- Issued June 25, 2004.

7). RESPONDENT'S RESPONSE TO CHARGING LETTER

- Filed on July 15, 2004.

8). NOTICE OF CASE ASSIGNMENT

- Assigned to ALJ Fitzpatrick on July 27, 2004.
- ALJ Norfolk received pleadings and documents on July 30, 2004.

9). ORDER TO FILE BRIEFS

- Issued August 18, 2004.

10). RESPONDENT'S LETTER TO THE JUDGE

- Dated September 7, 2004.

11) ORDER

- Issued September 8, 2004.

13) REQUEST FOR STAY OF PROCEEDINGS

- Dated September 17, 2004.

13) ORDER

- Issued September 20, 2004.

14) LETTER FROM THE RESPONDENT (REQUEST FOR EXTENSION)

- Dated November 4, 2004.

15) ORDER

- Issued November 4, 2004.

16) RESPONDENT'S SUBMISSIONS OF EVIDENCE

- Dated November 24, 2004.

17) NOTIFICATION OF REASSIGNMENT

- Issued December 28, 2004.
- Reassigned to ALJ Brudzinski.

18) ORDER TO FILE PREDECISIONAL BRIEFS

- Issued December 29, 2004.
- Predecisional Brief due January 24, 2005.

19) MEMORANDUM OF PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

- Filed January 25, 2005.

**NOTICE TO THE PARTIES REGARDING REVIEW BY UNDER SECRETARY**

**TITLE 15 -- COMMERCE AND FOREIGN TRADE  
SUBTITLE B -- REGULATIONS RELATING TO COMMERCE AND FOREIGN TRADE**

**CHAPTER VII -- BUREAU OF INDUSTRY AND SECURITY, DEPARTMENT OF  
COMMERCE**

**SUBCHAPTER C -- EXPORT ADMINISTRATION REGULATIONS  
PART 766 -- ADMINISTRATIVE ENFORCEMENT PROCEEDINGS**

**15 CFR 766.22**

**§ 766.22 Review by Under Secretary.**

(a) Recommended decision. For proceedings not involving violations relating to part 760 of the EAR, the administrative law judge shall immediately refer the recommended decision and order to the Under Secretary. Because of the time limits provided under the EAA for review by the Under Secretary, service of the recommended decision and order on the parties, all papers filed by the parties in response, and the final decision of the Under Secretary must be by personal delivery, facsimile, express mail or other overnight carrier. If the Under Secretary cannot act on a recommended decision and order for any reason, the Under Secretary will designate another Department of Commerce official to receive and act on the recommendation.

(b) Submissions by parties. Parties shall have 12 days from the date of issuance of the recommended decision and order in which to submit simultaneous responses. Parties thereafter shall have eight days from receipt of any response(s) in which to submit replies. Any response or reply must be received within the time specified by the Under Secretary.

(c) Final decision. Within 30 days after receipt of the recommended decision and order, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order of the administrative law judge. If he/she vacates the recommended decision and order, the Under Secretary may refer the case back to the administrative law judge for further proceedings. Because of the time limits, the Under Secretary's review will ordinarily be limited to the written record for decision, including the transcript of any hearing, and any submissions by the parties concerning the recommended decision.

(d) Delivery. The final decision and implementing order shall be served on the parties and will be publicly available in accordance with § 766.20 of this part.

(e) Appeals. The charged party may appeal the Under Secretary's written order within 15 days to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. § 2412(c)(3).

From: Origin ID: (212)668-2970  
Shaniqua Jenkins

1 South Street  
Battery Park Bldg, Rm 215  
New York City, NY 10004



CL813200400119

Ship Date: 26APR05  
Actual Wgt: 1 LB  
System#: 2232168/INET2000  
Account#: S

REF: 04-BIS-11



Delivery Address Bar Code

SHIP TO: (202)482-5301 BILL SENDER  
Under Secretary for Export Administ  
Bureau of Industry and Security  
14th and Constitution Ave, N.W.  
Room H-3839  
Washington, DC 20230



PRIORITY OVERNIGHT

TUE

Deliver By:  
26APR05

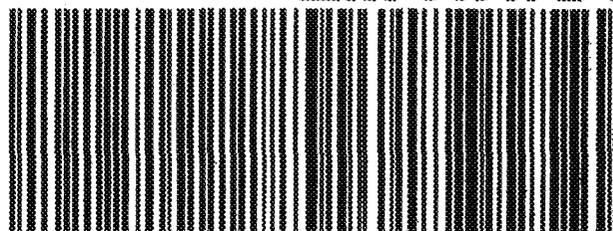
TRK# 7922 6412 3560

FORM  
0201

IAD A2

20230 -DC-US

ZM NHKA



Shipping Label: Your shipment is complete

1. Use the 'Print' feature from your browser to send this page to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

UNITED STATES DEPARTMENT OF COMMERCE  
UNDER SECRETARY FOR INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

.....  
In the Matter of: )

Petrom GmbH International Trade )  
Maria-Theresa Strasse 26 )  
Munich 81675 )  
Germany )

Respondent )  
.....

) Docket No. 04-BIS-11

DECISION AND ORDER

On March 29, 2004, the Bureau of Industry and Security ("BIS") filed a charging letter against the respondent, Petrom GmbH International Trade ("Petrom"), that alleged one violation of Section 764.2(d), and six violations each of Sections 764.2(c) and 764.2(e) of the Export Administration Regulations ("Regulations"),<sup>1</sup> which were issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) ("Act").<sup>2</sup>

.....  
<sup>1</sup> The violations charged occurred in 1999 and 2000. The Regulations governing the violations at issue are found in the 1999 and 2000 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999-2000)). The 2005 Regulations establish the procedures that apply to this matter.

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 6, 2004 (69 FR 48763, August 10, 2004), continues the Regulations in effect under IEEPA.

Specifically, the charging letter alleged that from on or about March 1999 to on or about May 2000, Petrom conspired and acted in concert with others, known and unknown, to bring about acts that constitute violations of the Regulations by arranging the export from the United States to Iran via Germany of items subject to the Regulations and the Iran Transaction Regulations without the required U.S. Government authorizations. In doing so, Petrom committed one violation of Section 764.2(d) of the Regulations. These items included check valves, regulatory valves, test kits, electrical equipment, ship tire curing bladders, and other spare parts, all of which were classified as EAR99 items under the Regulations.

The charging letter also alleged that from on or about March 1999 to on or about May 2000, Petrom solicited on six separate occasions violations of the Regulations by ordering the shipment of the items at issue from the United States to Iran via Germany. Petrom thereby committed six violations of Section 764.2(c) of the Regulations. Furthermore, the charging letter alleged that in making each of these six unlawful solicitations, Petrom acted with knowledge that a violation of the Regulations was intended to occur, as Iran was the intended ultimate destination of the items. The charging letter alleged that at all relevant times, Petrom knew that prior authorization was required from the U.S. Government to ship the items at issue to Germany for further shipment to Iran, and ordered the shipment of the items knowing that the shipment would occur without the required authorizations. In doing so, Petrom violated Section 764.2(e) of the Regulations.

On July 5, 2004, Petrom filed an answer denying the formal charges. As ordered by the Administrative Law Judge ("ALJ"), on October 20, 2004, BIS filed a Memorandum and Submission of Evidence to Supplement the Record ("Agency Brief") and, on November 26,

2004, Petrom filed its submission to supplement the record. On January 24, 2005, BIS filed a Memorandum of Proposed Findings of Fact and Conclusions of Law. Petrom did not submit any further filings to the ALJ.

Based on the record before it, on April 25, 2005, the ALJ issued a Recommended Decision and Order ("Recommended Decision and Order") in which he found that Petrom committed the 13 violations of the Regulations described above. In considering the record as a whole, the ALJ found that Petrom conspired or acted in concert with others, mainly Sunshine Technology and Supplies, Inc. ("Sunshine"), to export items subject to the Regulations to Iran without authorization from the Department of Treasury's Office of Foreign Assets Control ("OFAC") in violation of Section 746.7 of the Regulations. According to the ALJ, Petrom developed a scheme to facilitate the ordering of parts, equipment, and other items from U.S. companies, mainly through Sunshine, for export to Germany with the intent to reexport the items to Iran. The ALJ found that Sunshine was established in March 1999 to serve as a front company in the United States for procuring U.S.-origin items. See Recommended Decision and Order, 39. Indeed, the agreement that Petrom was the "actual owner" of Sunshine, and that Sunshine was established to "exclusively carry out [the] business activities of Petrom. Petrom shall provide the necessary info, instructions, payment etc. for such business activities." Agency Brief, Exhibit 25.

In addition, the ALJ found that BIS proved by the preponderance of evidence that Petrom solicited on six separate occasions unauthorized exports for parts, equipment, and other items subject to the EAR from the United States to Iran via Germany in violation of Section 764.2(c) of the Regulations. According to the ALJ, based on "pertinent, reliable, and credible" evidence provided by the German Customs Authority, Petrom used a client identification system in its

orders, invoices, and correspondence that included unique identifiers for Iranian customers.

Recommended Decision and Order, 32. Based on these unique identifiers, as well as invoices, facsimiles, letters, and other documents related to the specific transactions at issue, BIS established that Petrom ordered parts, equipment, and items subject to the EAR for export to Iran, as alleged in the charging letter. See Recommended Decision and Order, 32-33.

In each of these six solicitations, the ALJ found by the preponderance of the evidence that Petrom ordered the parts, equipment, and other items at issue with knowledge that a violation of the Regulations was intended to occur. According to the ALJ, Petrom possessed "actual knowledge" that the United States maintained an embargo against Iran. Recommended Decision and Order, 38. In February 2000, in correspondence to the German Customs Authority, Petrom stated that "it is the expressed business policy of our company to also consider embargo regulations of other States," and that a particular transaction involving Iran would have been executed only "after clarification if it is permissible according to American regulations." Agency Brief, Exhibit 28. In June 1992, Petrom directed a company in the United States to obtain export licenses from the Department of Commerce for a shipment to Iran. See Recommended Decision and Order, 38. In light of these facts, the ALJ held that Petrom committed one violation of Section 764.2(d), and six violations each of Sections 764.2(c) and 764.2(e) of the Regulations. He also recommended the penalty proposed by BIS – denial of Petrom's export privileges for 20 years and a civil monetary sanction of \$143,000.

Pursuant to Section 766.22 of the Regulations, the ALJ's Recommended Decision and Order has been referred to me for final action. Based on my review of the entire record,<sup>3</sup> I find that the record supports the ALJ's findings of fact and conclusions of law regarding the above-referenced charge.<sup>4</sup> I also find that the penalty recommended by the ALJ is appropriate given Petrom's severe disregard and contempt for U.S. export control laws, the extensive and far-reaching nature of the violations, and the importance of preventing future unauthorized exports to Iran, a country against which the United States maintains an economic embargo because of its support for international terrorism. Specifically, Petrom attempted to circumvent U.S. export control laws by setting up and conspiring with a front company in the United States in an effort to order U.S.-origin items for ultimate delivery to Iran through Germany. It ordered these items for export to Iran knowing that such exports would violate the U.S. embargo on Iran. In addition,

---

<sup>3</sup> On May 12, 2005, BIS submitted a response to the ALJ's Recommended Decision and Order, but failed to file its response by the deadline set forth in the Regulations. Under Section 766.22(b) of the Regulations, parties have 12 days from the date of issuance of the ALJ's Recommended Decision and Order in which to submit a response. As the Recommended Decision and Order was issued on April 25, 2005, responses were due no later than May 9, 2005. BIS, however, filed its response on May 12, 2005. As BIS failed to file its response by the deadline set forth in the Regulations, the response was considered in the Under Secretary's deliberations concerning this matter. Petrom did not file a response to the ALJ's Recommended Decision and Order.

<sup>4</sup> There are two minor clarifications to the Recommended Decision and Order that need to be made:

(1) On pages 9 and 28, the Recommended Decision and Order states that the Respondent's Answer to the Memorandum and Submission of Evidence to Supplement the Record Submitted by the Bureau of Industry and Security was dated November 24, 2004. The correct date of this submission was November 26.

(2) On page 39, in the second paragraph of the section entitled "Conspiracy or Acting in Concert," the first sentence should read "Further, Petrom's compliance with all German export laws does *not* shield it from violating United States export laws." (emphasis added).

the proposed denial order is consistent with penalties imposed in recent cases under the Regulations involving shipments to Iran. See In the Matter of Adbulmir Mahdi, 68 Fed. Reg. 57406 (October 3, 2003) (affirming the recommendations of the ALJ that a 20-year denial was appropriate where violations involved multiple shipments of EAR99 items as part of a conspiracy to ship such items through Canada to Iran); In the Matter of Arian Transportvermittlungs GmbH, 69 Fed. Reg. 28120 (May 18, 2004) (affirming the recommendations of the ALJ that a 10-year denial order was appropriate where knowing violations involved on shipment of a controlled item to Iran); and In the Matter of Jabal Damavand General Trading Company, 67 Fed. Reg. 32009 (May 13, 2002) (affirming the recommendations of the ALJ that a 10-year denial was appropriate where knowing violations involved a shipment of an EAR99 item to Iran). In light of these circumstances, I affirm the findings of fact and conclusions of law of the ALJ's Recommended Decision and Order.

IT IS HEREBY ORDERED,

FIRST, that a civil penalty of \$143,000 is assessed against Petrom GmbH International Trade ("Petrom"), which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

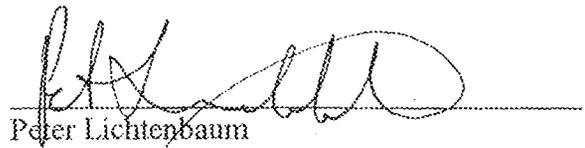
SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Petrom will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as further described in the attached Notice.

- B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession, or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from a Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed, or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed, or controlled by a Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, "servicing" means installation, maintenance, repair, modification, or testing.

FIFTH, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

SIXTH, that this Order shall be served on the Denied Person and on BIS, and shall be published in the *Federal Register*. In addition, the ALJ's Recommended Decision and Order, except for the section related to the Recommended Order, shall be published in the *Federal Register*.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the *Federal Register*.



Peter Lichtenbaum

Acting Under Secretary of Commerce  
for Industry and Security

Dated: May 26, 2005

UNITED STATES DEPARTMENT OF COMMERCE  
UNDER SECRETARY FOR INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

---

In the Matter of:	)	
	)	
Petrom GmbH International Trade	)	Docket No. 04-BIS-11
Maria-Theresa Strasse 26	)	
Munich 81675	)	
Germany	)	
	)	
Respondent	)	

---

DECISION AND ORDER

On March 29, 2004, the Bureau of Industry and Security ("BIS") filed a charging letter against the respondent, Petrom GmbH International Trade ("Petrom"), that alleged one violation of Section 764.2(d), and six violations each of Sections 764.2(c) and 764.2(e) of the Export Administration Regulations ("Regulations"),<sup>1</sup> which were issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) ("Act").<sup>2</sup>

---

<sup>1</sup> The violations charged occurred in 1999 and 2000. The Regulations governing the violations at issue are found in the 1999 and 2000 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999-2000)). The 2005 Regulations establish the procedures that apply to this matter.

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 6, 2004 (69 FR 48763, August 10, 2004), continues the Regulations in effect under IEEPA.

Specifically, the charging letter alleged that from on or about March 1999 to on or about May 2000, Petrom conspired and acted in concert with others, known and unknown, to bring about acts that constitute violations of the Regulations by arranging the export from the United States to Iran via Germany of items subject to the Regulations and the Iran Transaction Regulations without the required U.S. Government authorizations. In doing so, Petrom committed one violation of Section 764.2(d) of the Regulations. These items included check valves, regulatory valves, test kits, electrical equipment, ship tire curing bladders, and other spare parts, all of which were classified as EAR99 items under the Regulations.

The charging letter also alleged that from on or about March 1999 to on or about May 2000, Petrom solicited on six separate occasions violations of the Regulations by ordering the shipment of the items at issue from the United States to Iran via Germany. Petrom thereby committed six violations of Section 764.2(c) of the Regulations. Furthermore, the charging letter alleged that in making each of these six unlawful solicitations, Petrom acted with knowledge that a violation of the Regulations was intended to occur, as Iran was the intended ultimate destination of the items. The charging letter alleged that at all relevant times, Petrom knew that prior authorization was required from the U.S. Government to ship the items at issue to Germany for further shipment to Iran, and ordered the shipment of the items knowing that the shipment would occur without the required authorizations. In doing so, Petrom violated Section 764.2(e) of the Regulations.

On July 5, 2004, Petrom filed an answer denying the formal charges. As ordered by the Administrative Law Judge ("ALJ"), on October 20, 2004, BIS filed a Memorandum and Submission of Evidence to Supplement the Record ("Agency Brief") and, on November 26,

2004, Petrom filed its submission to supplement the record. On January 24, 2005, BIS filed a Memorandum of Proposed Findings of Fact and Conclusions of Law. Petrom did not submit any further filings to the ALJ.

Based on the record before it, on April 25, 2005, the ALJ issued a Recommended Decision and Order ("Recommended Decision and Order") in which he found that Petrom committed the 13 violations of the Regulations described above. In considering the record as a whole, the ALJ found that Petrom conspired or acted in concert with others, mainly Sunshine Technology and Supplies, Inc. ("Sunshine"), to export items subject to the Regulations to Iran without authorization from the Department of Treasury's Office of Foreign Assets Control ("OFAC") in violation of Section 746.7 of the Regulations. According to the ALJ, Petrom developed a scheme to facilitate the ordering of parts, equipment, and other items from U.S. companies, mainly through Sunshine, for export to Germany with the intent to reexport the items to Iran. The ALJ found that Sunshine was established in March 1999 to serve as a front company in the United States for procuring U.S.-origin items. See Recommended Decision and Order, 39. Indeed, the agreement that Petrom was the "actual owner" of Sunshine, and that Sunshine was established to "exclusively carry out [the] business activities of Petrom. Petrom shall provide the necessary info, instructions, payment etc. for such business activities." Agency Brief, Exhibit 25.

In addition, the ALJ found that BIS proved by the preponderance of evidence that Petrom solicited on six separate occasions unauthorized exports for parts, equipment, and other items subject to the EAR from the United States to Iran via Germany in violation of Section 764.2(c) of the Regulations. According to the ALJ, based on "pertinent, reliable, and credible" evidence provided by the German Customs Authority, Petrom used a client identification system in its

orders, invoices, and correspondence that included unique identifiers for Iranian customers. Recommended Decision and Order, 32. Based on these unique identifiers, as well as invoices, facsimiles, letters, and other documents related to the specific transactions at issue, BIS established that Petrom ordered parts, equipment, and items subject to the EAR for export to Iran, as alleged in the charging letter. See Recommended Decision and Order, 32-33.

In each of these six solicitations, the ALJ found by the preponderance of the evidence that Petrom ordered the parts, equipment, and other items at issue with knowledge that a violation of the Regulations was intended to occur. According to the ALJ, Petrom possessed “actual knowledge” that the United States maintained an embargo against Iran. Recommended Decision and Order, 38. In February 2000, in correspondence to the German Customs Authority, Petrom stated that “it is the expressed business policy of our company to also consider embargo regulations of other States,” and that a particular transaction involving Iran would have been executed only “after clarification if it is permissible according to American regulations.” Agency Brief, Exhibit 28. In June 1992, Petrom directed a company in the United States to obtain export licenses from the Department of Commerce for a shipment to Iran. See Recommended Decision and Order, 38. In light of these facts, the ALJ held that Petrom committed one violation of Section 764.2(d), and six violations each of Sections 764.2(c) and 764.2(e) of the Regulations. He also recommended the penalty proposed by BIS – denial of Petrom’s export privileges for 20 years and a civil monetary sanction of \$143,000.

Pursuant to Section 766.22 of the Regulations, the ALJ's Recommended Decision and Order has been referred to me for final action. Based on my review of the entire record,<sup>3</sup> I find that the record supports the ALJ's findings of fact and conclusions of law regarding the above-referenced charge.<sup>4</sup> I also find that the penalty recommended by the ALJ is appropriate given Petrom's severe disregard and contempt for U.S. export control laws, the extensive and far-reaching nature of the violations, and the importance of preventing future unauthorized exports to Iran, a country against which the United States maintains an economic embargo because of its support for international terrorism. Specifically, Petrom attempted to circumvent U.S. export control laws by setting up and conspiring with a front company in the United States in an effort to order U.S.-origin items for ultimate delivery to Iran through Germany. It ordered these items for export to Iran knowing that such exports would violate the U.S. embargo on Iran. In addition,

---

<sup>3</sup> On May 12, 2005, BIS submitted a response to the ALJ's Recommended Decision and Order, but failed to file its response by the deadline set forth in the Regulations. Under Section 766.22(b) of the Regulations, parties have 12 days from the date of issuance of the ALJ's Recommended Decision and Order in which to submit a response. As the Recommended Decision and Order was issued on April 25, 2005, responses were due no later than May 9, 2005. BIS, however, filed its response on May 12, 2005. As BIS failed to file its response by the deadline set forth in the Regulations, the response was considered in the Under Secretary's deliberations concerning this matter. Petrom did not file a response to the ALJ's Recommended Decision and Order.

<sup>4</sup> There are two minor clarifications to the Recommended Decision and Order that need to be made:

(1) On pages 9 and 28, the Recommended Decision and Order states that the Respondent's Answer to the Memorandum and Submission of Evidence to Supplement the Record Submitted by the Bureau of Industry and Security was dated November 24, 2004. The correct date of this submission was November 26.

(2) On page 39, in the second paragraph of the section entitled "Conspiracy or Acting in Concert," the first sentence should read "Further, Petrom's compliance with all German export laws does *not* shield it from violating United States export laws." (emphasis added).

the proposed denial order is consistent with penalties imposed in recent cases under the Regulations involving shipments to Iran. See In the Matter of Adbulmir Mahdi, 68 Fed. Reg. 57406 (October 3, 2003) (affirming the recommendations of the ALJ that a 20-year denial was appropriate where violations involved multiple shipments of EAR99 items as part of a conspiracy to ship such items through Canada to Iran); In the Matter of Arian Transportvermittlungs GmbH, 69 Fed. Reg. 28120 (May 18, 2004) (affirming the recommendations of the ALJ that a 10-year denial order was appropriate where knowing violations involved on shipment of a controlled item to Iran); and In the Matter of Jabal Damavand General Trading Company, 67 Fed. Reg. 32009 (May 13, 2002) (affirming the recommendations of the ALJ that a 10-year denial was appropriate where knowing violations involved a shipment of an EAR99 item to Iran). In light of these circumstances, I affirm the findings of fact and conclusions of law of the ALJ's Recommended Decision and Order.

IT IS HEREBY ORDERED,

FIRST, that a civil penalty of \$143,000 is assessed against Petrom GmbH International Trade ("Petrom"), which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

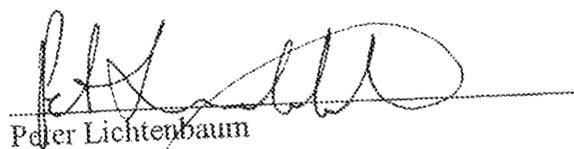
SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Petrom will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as further described in the attached Notice.

- B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession, or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from a Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed, or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed, or controlled by a Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, "servicing" means installation, maintenance, repair, modification, or testing.

FIFTH, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

SIXTH, that this Order shall be served on the Denied Person and on BIS, and shall be published in the *Federal Register*. In addition, the ALJ's Recommended Decision and Order, except for the section related to the Recommended Order, shall be published in the *Federal Register*.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the *Federal Register*.



Peter Lichtenbaum

Acting Under Secretary of Commerce  
for Industry and Security

Dated: May 26, 2005